IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.564 OF 2005

Vipul A. Desai ...Appellant

Vs.

Municipal Corporation of
Greater Bombay ...Respondent

Mr.V.A.Thorat Senior Advocate with Mr.R.A.Thorat for the Appellant
Ms Geeta Jogalker for the Respondent-Corporation.

CORAM: A.S.OKA, J.
DATED: MAY 3,2005.

P.C.:

1. This Appeal is preferred by the original Plaintiff for challenging the order impugned by which the learned Trial Judge has declined to grant ad-interim injunction in favour of the Appellant-Plaintiff. The challenge in the suit is to the notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 dated 27th January 2005 and order dated 22nd March 2005 passed on the basis of said notice .The Notice is in respect of construction of a mezzanine floor.

2. Shri Thorat, learned Senior Counsel for the Appellant submitted that there are large number of galas in Shri Laxmi Ashish Industrial Premises Co-operative Housing Society and some of the holders of galas have received identical notices from the Respondent-Corporation. He pointed out that in those cases, suits are filed and ad-interim reliefs have been granted by the Trial Court. He submitted that the mezzanine floor was in existence prior to the year 1997 and therefore,

as per the policy adopted by the Respondent-Corporation of regularizing the unauthorised construction of mezzanine floor and lofts in building which is pending for approval before the State Government, there cannot be demolition of the mezzanine floor.

3. The learned Advocate for the Respondent-Corporation submitted that in 1984 permission for constructing a loft was granted. The learned Advocate further submitted that the mezzanine floor has been constructed after 15th August 1997 and therefore the Appellant cannot place reliance on the policy. The learned Advocate further submitted that the letter dated 10th May 1995 will not help the Appellant in establishing that the mezzanine floor was constructed prior to the year 1997 as the said letter refers to the loft.

4. I have considered the rival submissions. In the reply sent by the Appellant to the Notice under Section 351 of the said Act of 1888 a specific contention was raised that in the year 1995, when the suit premises was inspected by the Officers of the Respondent-Corporation, the mezzanine floor was in existence. The said contention is not dealt with in the order dated 22nd March 2005 passed by the Assistant Commissioner of Respondent-Corporation.

5. The Respondent-Corporation has not filed any reply. If according to the Respondent-Corporation, the mezzanine floor

was constructed much prior to the year 1997, a reply will have to be filed by the Respondent-Corporation and necessary material will have tobe placed on record.

6. In view of what is stated above, a case for grant of ad-interim relief was made out and therefore the learned Trial Judge ought to have granted ad-interim relief in favour of the Appellant.

7. Hence, I pass the following order :

i) Impugned order dated 11th April 2005 is quashed and set aside.

ii) Till the final disposal of Notice of Motion both the parties will maintain status quo as of today in respect of the disputed structure.

iii) The Respondent-Corporation will file an Affidavit-in-Reply on or before 20th June 2005. The learned Trial Judge will hear and decide the Notice of Motion as expeditiously a possible.

iv) Appeal is disposed of in above terms.

v) All contentions of the parties in pending Notice of Motion are expressly kept open.

Judge.